

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD A. WASHINGTON,	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	
v.	:	NO. 06-CV-1437
	:	
RAYMOND J. SOBINA, et al.,	:	
	:	
Respondents.	:	

EXPLANATION AND ORDER

On September 25, 2002, Washington filed a Petition for Writ of Habeas Corpus for denial of his Sixth Amendment Right to a Speedy Trial and his Due Process Right to a Speedy Appeal. By that time, Washington had already had three trials and was facing a fourth in the Court of Common Pleas in Philadelphia County. In July 1997, the first trial ended in a mistrial. When retried in December 1998, a jury convicted on three counts—robbery of a motor vehicle, criminal conspiracy, and possession of an instrument of a crime (robbery convictions), acquitted on other charges, and failed to reach a verdict on the murder and kidnaping charges. When tried for a third time on the murder and kidnaping charges in 2003 (murder and kidnaping charges) the jury was hung again. The Commonwealth planned to try Washington for a fourth time on the outstanding murder and kidnaping charges. Meanwhile, on February 16, 1999, Washington was sentenced on those charges on which he had been convicted, the robbery convictions, and on March 5, 1999, he appealed those convictions to the Pennsylvania Superior Court.

On September 12, 2005, I denied Washington's Sixth Amendment Speedy Trial Claim relating to retrial of the outstanding murder and kidnaping charges and granted his Due Process Speedy Appeal Claim relating to his appeal in state court of his robbery convictions. On that

date I also ordered that unless the Superior Court of Pennsylvania decided Washington's direct appeal on the robbery convictions by March 13, 2006, a writ of habeas corpus would issue.

Washington appealed my ruling on the speedy trial claim (murder and kidnaping charges) and the Commonwealth appealed my ruling on the speedy appeal claim (robbery convictions). I stayed my order on the speedy trial claim pending appeal.

On May 9, 2006, while the appeals were pending in the Court of Appeals for the Third Circuit, Washington pled in Common Pleas Court to the outstanding charges of murder and kidnaping. On August 31, 2006, because of his plea, the Third Circuit dismissed Washington's habeas petition relating to the failure of the court to give him a speedy trial on the murder and kidnaping charges. The Third Circuit held that by entering an unconditional guilty plea to the murder and kidnaping, Washington waived his claim alleging denial of his Sixth Amendment right to a speedy trial on those charges. (C.A.No. 05-4599). On November 16, 2006, Washington filed a notice of appeal in the Pennsylvania Superior Court challenging his guilty plea. This appeal is currently pending.

In the meantime, on April 5, 2006, Washington filed another Petition for Habeas Corpus in this Court addressing his robbery convictions and additional issues. On August 22, 2006, I dismissed this petition as a second or successive petition. Washington then applied to the Third Circuit to file a second or successive habeas corpus petition. His petition to the Third Circuit asserted habeas claims related to both his robbery convictions and his subsequent guilty plea to the murder and kidnaping charges. On October 31, 2006, the Third Circuit issued an order holding Washington's application unnecessary because his proposed petition was not second or successive. (C.A.No. 06-4137).

On November 20, 2006, Washington filed in this Court a Motion to Re-Open Action,

requesting that I rule on the substance of his April 5, 2006, habeas petition.¹

A state prisoner is entitled to federal habeas review of his conviction after exhausting the remedies available in state courts. 28 U.S.C. § 2254(b)(1)(A); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). The Commonwealth's appeal of this Court's grant of habeas on Washington's speedy appeal claim (02-CV-7474) on the robbery convictions is pending in the Third Circuit (C.A.No. 05-4522). After the Third Circuit rules on the speedy appeal claim, Washington must pursue his claims related to his robbery convictions in state court if appropriate. Then, if necessary, Washington can return to federal court on his habeas petition on claims related to the robbery convictions. Washington's direct appeal challenging the voluntariness of his guilty plea on the murder and kidnaping charges is pending in the Pennsylvania Superior Court. Washington must exhaust this state court review on his guilty plea to the murder and kidnaping charges before I can entertain his federal habeas petition on these claims.²

¹ On April 23, 2007, Washington requested leave to amend his habeas petition to assert claims related to both his robbery convictions and the murder and kidnaping plea. Even if I were to allow leave to amend at this time, Washington has not exhausted any of these claims in state court, as discussed below. The issue of the propriety of the amendment will be decided after exhaustion.

² I am denying Washington's request to excuse the exhaustion requirement without prejudice to reassert depending upon the ruling of the Third Circuit on Washington's speedy appeal claim. (C.A.No. 05-4522).

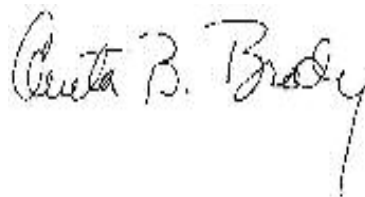
ORDER

AND NOW, this _7th_ day of ___June_ 2007, it is **ORDERED** that the above-captioned case shall be placed on civil suspense until further order of this Court.

It is further **ORDERED**:

1) If Washington intends to pursue his habeas claims related to his robbery convictions, Washington shall notify this Court within 60 days from the date these claims are exhausted in state court; and

2) If Washington intends to pursue his habeas claims related to his guilty plea on the murder and kidnaping charges, Washington shall notify this Court within 60 days from the date these claims are exhausted in state court.

A handwritten signature in dark ink, appearing to read "Anita B. Brody". The signature is written in a cursive, flowing style with a long vertical stroke at the end.

ANITA B. BRODY, J.